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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARIA SKILLAS

Appeal 2009-006713
Application 10/691,977
Technology Center 3600

Decided: November 20, 2009

Before JAMESON LEE, RICHARD TORCZON, and
MICHAEL P. TIERNEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by an Appellant under 35 U.S.C. § 134(a) from a final rejection of claims 1-3, 5-8, 11 and 12. We have jurisdiction under 35 U.S.C. § 6(b). We *reverse*.

References Relied on by the Examiner

Knouse et al. ("Knouse")	2,263,136	Nov. 18, 1941
DeCarolis et al. ("DeCarolis")	5,044,083	Sep. 3, 1991
Lovett	Des. 337,667	Jul. 27, 1993

The Rejections on Appeal

The Examiner rejected claims 1-3 and 12 under 35 U.S.C. § 102(b) as anticipated by Lovett.

The Examiner rejected claims 5, 7, 8, and 11 under 35 U.S.C. § 103(a) as unpatentable over Lovett and Knouse.

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as unpatentable over Lovett, Knouse, and DeCarolis.

The Invention

The invention relates to an ergonomic handle that allows a user to grip an appliance with their hand oriented either horizontally or vertically. (Spec. 1:8-10.)

Independent claim 1 is reproduced below (App. Br. 14 Claims App'x):

1. An appliance having an ergonomic handle offering users the choice of horizontally or vertically gripping the handle, comprising:

a first handle member shaped and dimensioned for gripping by an individual, the first handle member having a first longitudinal axis, a first end and a second end, and upper and lower surfaces;

a second handle member shaped and dimensioned for gripping by an individual, the second handle member having a second longitudinal axis, a first end and a second end, wherein the first end of the second handle member is the only portion of the handle connected to the appliance;

the first handle member and the second handle member being connected such that the second longitudinal axis of the second handle member is oriented approximately perpendicular relative to the first longitudinal axis of the first handle member, and

wherein the first end of the first handle member is connected to the second end of the second handle member, the second end of the first handle member is free and unconnected to the appliance, and the first end of the second handle member is connected directly to the appliance with the appliance extending downwardly therefrom along the second longitudinal axis of the second handle member.

B. ISSUE

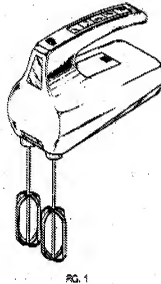
1. Has the Appellant shown that the Examiner was incorrect in finding that Lovett discloses an appliance with first and second handle members that are shaped and dimensioned for gripping?

2. Has the Examiner established that one with ordinary skill in the art would have recognized as obvious from the teachings of Lovett and Knouse or the teachings of Lovett, Knouse and DeCarolis that a handle may include first and second handle members where the first end of the second handle member is the only portion of the handle that is connected to an appliance?

C. FINDINGS OF FACT

1. Lovett discloses a design for a hand held mixer. (Lovett Claim.)

2. Lovett's Figure 1 is reproduced below:



The figure above depicts a hand held mixer.

3. Knouse discloses a portable power saw with two handle members that are each connected to the body of the saw. (Knouse p. 1, ll. 1-3; Fig. 1.)

4. DeCarolís discloses a hacksaw with a single handle member. (DeCarolís 1:5-6; Fig. 1.)

5. Neither Knouse nor DeCarolís disclose a second handle member having a first end that is the only portion that connects first and second handle members to an appliance.

D. PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses all elements of the claimed invention. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990).

The test for obviousness is what the combined teachings of the reference would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

E. ANALYSIS

Anticipation

We turn first to the anticipation rejection. The Examiner rejected claims 1-3 and 12 as anticipated by Lovett. Dependent claims 2, 3, and 12 are argued collectively with independent claim 1. We focus on the disputed limitations. The Appellant contends that Lovett does not disclose a second handle member as required by claim 1. In particular, claim 1 recites (Br. 14, Claims App'x):

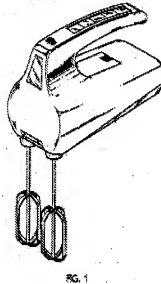
a second handle member shaped and dimensioned for gripping by an individual, the second handle member having a second longitudinal axis, a first end and a second end, wherein the first end of the second handle member is the only portion of the handle connected to the appliance[.]

In accounting for that limitation, the Examiner pointed to Lovett as disclosing a “2nd handle member.” (Ans. p. 4.) The Examiner explained that the handle member is formed by the vertical structure extending from the body of the hand held mixer and connects to a “1st handle member” that extends horizontally. (*Id.*)

The Appellant contends that the structure that the Examiner has termed a “2nd handle member” is not a handle member at all. In particular, the Appellant submits that that structure is not disclosed by Lovett as a portion of its mixer that is intended to be gripped and is not shaped and dimensioned for gripping as required by the claims. (Br. 9:3-13.)

The Appellant's argument is persuasive. A "second handle member shaped and dimensioned for gripping by an individual" is a structure that a person of ordinary skill in the art would recognize as a second or additional handle.

Lovett's Figure 1 is reproduced below:



The figure above depicts a hand held mixer.

In our view, one with ordinary skill in the art would recognize Lovett as disclosing only a single handle member, *i.e.*, the portion that extends horizontally above the body of the mixer. That structure is shaped and dimensioned as a handle for gripping. On the other hand, the vertical portion which the Examiner relied upon as an additional handle member is not similarly structured. That vertical portion is also not described as a handle. Instead, the vertical portion is configured simply to space Lovett's single horizontal handle a sufficient distance from the body of the mixer so that that handle may be gripped. We do not agree with the Examiner that that portion of Lovett's mixer is reasonably regarded as a separate handle

member that is shaped and dimensioned for gripping as required by the claims.

We do not sustain the rejection of claims 1-3 and 12 as anticipated by Lovett.

Obviousness

The Examiner rejected claims 5, 7, 8 and 11 as obvious over Lovett and Knouse and claim 6 as obvious over Lovett, Knouse and DeCarolis. Each of those claims is ultimately dependent on and includes all the limitations of claim 1. A feature of independent claim 1 is that the claimed second handle member also has a first end and a second end where the first end is the only portion that connects first and second handle members to the appliance. As discussed above in the context of the anticipation rejection, Lovett does not disclose the claimed second handle member and thus does not disclose the above-noted feature of the second handle member. The Examiner does not rely on Knouse and DeCarolis to cure that deficiency. Rather, the Examiner applies those references simply to account for limitations that are added by each of claims 5-8 and 11.

DeCarolis does not contribute to any aspect of a second handle member as that reference discloses a hacksaw with only a single handle member. Knouse discloses a portable power saw that does have two handle members. However, Knouse does not disclose that its second handle member has a first end that is the *only* portion that connects first and second handle members to the saw. In Knouse, both of its handle members are joined to the saw body.

The test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re*

Keller, 642 F.2d at 425. Here, the Examiner did not explain, and it is not readily apparent to us, how one with ordinary skill in the art would have reasonably combined the teachings of Knouse and/or DeCarolis with Lovett such that a second handle member is the only portion that connects first and second handle members to Lovett's mixer in the manner required by each of the Appellant's claims. Accordingly, we do not sustain the rejection of claims 5, 7, 8, and 11 as unpatentable over Lovett and Knouse or the rejection of claim 6 as unpatentable over Lovett, Knouse, and DeCarolis.

F. CONCLUSION

1. The Appellant has shown that the Examiner was incorrect in finding that Lovett discloses an appliance with first and second handle members that are shaped and dimensioned for gripping.

2. The Examiner has not established that one with ordinary skill in the art would have recognized as obvious from the teachings of Lovett and Knouse or the teachings of Lovett, Knouse and DeCarolis that a handle may include first and second handle members where the first end of the second handle member is the only portion of the handle that is connected to an appliance.

G. ORDER

The rejection of claims 1-3 and 12 under 35 U.S.C. § 102(b) as anticipated by Lovett is **reversed**.

The rejection of claims 5, 7, 8, and 11 under 35 U.S.C. § 103(a) as unpatentable over Lovett and Knouse is **reversed**.

The rejection of claim 6 under 35 U.S.C. § 103(a) as unpatentable over Lovett, Knouse, and DeCarolis is **reversed**.

Appeal 2009-006713
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REVERSED

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